IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 2729 of 2006(Y)

SUO MOTU PROCEEDINGS INITIATED UPON A COMPLAINT-PETITION RECEIVED FROM MR.SUNNY, U.T.NO.1324, SUB JAIL, PATHANAMTHITTA

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PETITIONER:

SUO MOTU

BY ADV. ADV.VINITHA PRASANNAN(STATE BRIEF)

RESPONDENTS:

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1. STATE OF KERALA,
   REP. DIRECTOR GENERAL OF PROSECUTION,
   HIGH COURT BUILDING, ERNAKULAM.

2. SUB DIVISIONAL MAGISTRATE,
   ADOOR, PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2729 of 2006

Dated this the 30th day of May, 2007

ORDER

Petitioner is a person, who was arrested under suspicious circumstances on 01.02.2006. The arrest was effected under Section 41(2) of the Cr.P.C. He was produced before the Judicial Magistrate having jurisdiction. His remand was extended from time to time by the learned Judicial Magistrate. Long later, the police officer filed a report before the Sub Divisional Magistrate praying for initiation of action under Section 109 Cr.P.C. The petitioner was produced before the Sub Divisional Magistrate on 28.02.2006. Thereafter also, he was remanded from time to time. Long later on 23.03.2006, the petitioner submitted a letter to this Court while in custody, on the basis of which the Judge concerned directed that suo motu proceedings in Crl.M.C be registered. It is accordingly that this proceedings have been initiated.

2. A counsel has been appointed to render legal aid to the petitioner . Advocate Vineetha Prasannan has assisted this Court with all details.

3. The learned counsel for the petitioner fairly submits that the arrest in the instant case cannot be faulted as it is allegedly on the basis of a reasonable suspicion which arose on the basis of the alleged

conduct of the petitioner. But counsel points out that from 01.02.2006 to 14.06.2006, the petitioner, a person belonging to the weaker section of the community, has been left to languish in the prison without even a proper preliminary order being passed against him. The counsel points out particularly that the provisions of Chapter VIII Cr.P.C have not been complied with strictly. The learned counsel for the petitioner points out that the learned Sessions Judge has also reported that there has been inadequacy in compliance of the stipulations of Chapter VIII in the report submitted to this Court as directed by this Court.

4. When information is placed before the Sub Divisional Magistrate about the need to proceed under Section 109 Cr.P.C, Section 111 Cr.P.C mandates that an order must be passed. In the instant case, no such order is seen passed as required under Section 111 Cr.P.C. Such order, Section 112 Cr.P.C mandates must be read over to the person proceeded against and substance thereof must be explained to him. In the instant case, even that has not been done. The petitioner was released on bail on 07.04.2006. It is significant that not even an interim bond was got executed from him and on the date when he was released on bail, no order under Section 111 Cr.P.C had been passed also.

5. The learned Sessions Judge has reported that when the petitioner was summoned in connection with the enquiry, he had not appeared. The report of the Sub Divisional Magistrate also shows that after his release on bail, the petitioner has not been co-operating with the Court and he has not appeared before court to participate in the proceedings.

6. The learned counsel for the petitioner submits that notwithstanding all this, it would harsh and unkind to continue the proceedings against the petitioner as the procedure adopted so far as is in gross violation of the provisions of Chapter VIII Cr.P.C. At this point of time, there has been absolutely no justification in granting the Sub Divisional Magistrate an opportunity to set the clock back, correct the errors and proceed afresh.

7. Having rendered my very anxious consideration to all the relevant inputs and having perused the records of this Court and the records of the Sub Divisional Magistrate, I am satisfied that there is merit in the submission of the learned counsel for the petitioner. The procedure prescribed by law has not been followed at all. This has resulted in serious infringement of the rights of the petitioner and unnecessary detention of the petitioner from 01.02.2006 to 07.04.2006. It would be a traversity of justice to permit continuance of the proceedings against the petitioner in these circumstances.

8. In the result, this Crl.M.C is allowed. Proceedings against the petitioner initiated under Section 109 Cr.P.C is quashed. The proceedings need not be continued. Return the documents to the court below.

(R.BASANT, JUDGE)

rtr/-